Sarjit Singh Khaira v Government of Sarawak

HIGH COURT (KUCHING) — CIVIL APPEAL NO 01-36-1989-II
ABDUL KADIR SULAIMAN J
12 OCTOBER 1995

Civil Procedure *— Costs — Taxation — Bill of costs — Failure to furnish various dates in some items of the government's bill of costs — Application for review on the principal ground of non-compliance with the provisions of O 59 r 24(2) — Rules of the High Court 1980 O 59 r 24(2)*

This was an application by the government of Sarawak to review the decision of the deputy registrar who, when reviewing the taxation, disallowed wholly the claim of the government in respect of some items of a government's bill of costs on the ground that she had no jurisdiction to allow the claim as the government had not furnished the dates against these items contrary to O 59 r 24(2) of the Rules of the High Court 1980. Hence this application for review by the judge made by the government. She held that the requirement as to the date in the said O 59 r 24(2) of the Rules of the High Court 1980 was mandatory.

Held, allowing the review:

(1) It was a matter of the interpretation to be given to the word 'must' used in O 59 r 24(2) of the Rules of the High Court 1980. The court was of the view that it was not the intention of the legislature to impose a mandatory requirement of furnishing a date in respect of every item claimed during taxation.

(2) Certain items were by necessity required to be satisfied by the provision of dates in regard to anything done in order to satisfy the taxing officer so as to succeed in the claim for costs.

(3) However, there might be cases where by the nature of anything done which was to be included as an item of costs which could not be determined by any specific date. A good example was in the case of making preparations for a particular case to come on for trial. The time spent might spread over a period of time continuous or with a break in between. In such a case it would be utterly burdensome to list out all the dates involved.

(4) It sufficed if the claim over the particulars mentioned in the bill justified the taxing officer as being reasonable in the exercise of his discretion in taxing the costs in respect of the item. For that reason, in App 1 to the order, provisions were made in respect of certain items where the amount of costs was fixed based on certain criteria, such as to be based on the number of folios involved.

(5) Where the amount could not be quantified, the discretion was given to the taxing officer to decide on the amount based on the matters presented before him during taxation.

(6) If the deputy registrar was satisfied as to the matter as mentioned in the particulars as against the number of folios involved, it mattered not whether any date was included in the bill against the item, for to attend to the matter of perusing the memorandum of appeal, it need not be done on any particular day or in so many days. But for so long as the number of folios were appropriate and was multiplied by the cost per folio the government was entitled for its costs on the item be taxed.

(7) Order 59 r 24(2) of RHC should not be given strict interpretation as to give the word 'must' used therein its ordinary meaning of being mandatory in nature. The word 'must' therein was to be construed depending on the circumstances of each individual case or matter.

(8) The whole idea in taxation exercise was to satisfy the taxing officer before allowing the claim for costs as was appropriate in the circumstances.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh Kerajaan Sarawak untuk mengkaji semula keputusan timbalan pendaftar yang, ketika mengkaji semula soal taksiran, telah tidak membenarkan keseluruhan tuntutan kerajaan berkenaan dengan beberapa perkara di dalam bil kos kerajaan atas alasan bahawa beliau tidak ada bidang kuasa untuk membenarkan tuntutan itu kerana kerajaan tidak memberikan tarikh bersangkutan dengan perkara itu bertentangan dengan A 59 k 24(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Maka permohonan untuk kajian semula oleh hakim telah dibuat oleh kerajaan. Timbalan pendaftar memutuskan bahawa keperluan berkenaan tarikh di dalam A 59 k 24(2) KMT adalah mandatori.

Diputuskan, membenarkan kajian semula itu:

(1) Ini adalah satu soal tentang tafsiran yang harus diberikan kepada perkataan 'must' yang digunakan di dalam A 59 k 24(2) KMT. Mahkamah berpendapat bahawa ianya bukan niat badan perundangan untuk meletakkan keperluan mandatori memberikan tarikh berkenaan dengan setiap perkara yang dituntut semasa taksiran.

(2) Perkara-perkara tertentu secara keperluan mesti dipuaskan dengan pengemukaan tarikh berkenaan dengan apa-apa yang dibuat untuk memuaskan pegawai taksiran supaya dapat berjaya di dalam tuntutan untuk kos.

(3) Walau bagaimanapun, mungkin terdapat kes-kes di mana oleh kerana sifat sesuatu yang dibuat yang dimasukkan sebagai satu perkara kos ianya tidak boleh ditentukan oleh apa-apa tarikh

yang spesifik. Satu misalan yang baik adalah dalam usaha membuat persiapan untuk sesuatu kes untuk perbicaraan. Masa yang digunakan mungkin diagihkan meliputi satu tempoh masa secara berterusan atau dengan waktu lapang di antaranya. Dalam keadaan sedemikian amatlah sukar untuk menyenaraikan kesemua tarikh yang terlibat.

(4) Memadailah jika tuntutan bagi perkara yang dinyatakan di dalam bil itu boleh menyokong penggunaan budi bicara pegawai taksiran ketika mentaksir kos berkenaan dengan perkara itu. Bagi sebab itu, di dalam Lampiran 1 kepada A 59, peruntukan dibuat berkenaan dengan berbagai perkara di mana amaun kos ditetapkan berdasarkan kriteria tertentu, seperti berdasarkan bilangan mukasurat yang terlibat.

(5) Di mana amaun itu tidak boleh dijumlahkan, budi bicara diberikan kepada pegawai taksiran untuk memutuskan amaun itu berdasarkan perkara yang dikemukakan kepadanya semasa taksiran.

(6) Jika timbalan pendaftar berpuas hati berkenaan perkara itu seperti yang dinyatakan di dalam butiran berkenaan bilangan mukasurat yang trlibat, tidaklah menjadi masalah sama ada apa-apa tarikh dimasukkan di dalam bil itu bagi perkara itu. Untuk menghadiri pembacaan memorandum rayuan, ianya tidak perlu dibuat pada mana-mana hari yang tertentu atau dalam begitu banyak hari. Tetapi asalkan bilangan mukasurat adalah berpatutan dan digandakan mengikut kos untuk setiap mukasurat, kerajaan berhak mendapat kosnya bagi perkara yang ditaksirkan itu.

(7) Aturan 59 k 24(2) KMT tidak patut diberikan tafsiran yang ketat sehingga memberikan perkataan 'must' yang digunakan di sana maksud biasanya sebagai mandatori. Perkataan 'must' di sana mesti ditafsirkan bergantung kepada keadaan setiap kes atau perkara.

(8) Tujuan gerak kerja taksiran ialah untuk memuaskan hati pegawai taksiran sebelum membenarkan tuntutan untuk kos seperti yang berpatutan mengikut keadaan kes.]

Notes

For cases on costs, see 2 *Mallal's Digest* (4th Ed, Reissue) paras 838–1088; [1989] *Mallal's Digest* paras 313–316; [1990] *Mallal's Digest* paras 228–234; [1991] *Mallal's Digest* paras 246–258; [1992] *Mallal's Digest* paras 203–221; [1993] *Mallal's Digest* paras 149–164; [1994] *Mallal's Digest* paras 249–260.

Cases referred to

Haji Mohamed bin Suboh v Davadas [1981] 1 MLJ 136 (not folld)
Ling Teck Yiu Paul v Sibu Municipal Council (Sibu Civil Application No 1 of 1988)(unreported) (not folld)

Mohamed bin Ismail v Tan Sri Haji Osman Saat [1982] 2 MLJ 133 (not folld) A

Legislation referred to

Rules of the High Court 1980 O 59 r 1(1), r 24(2), App 1

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TO Thomas (Thomas & Co) for the appellant.
Lim Heng Choo (State Attorney General's Chambers) for the respondent.

Abdul Kadir Sulaiman J: This is an application by the government of Sarawak, (hereinafter referred to as the government) for me to review C the decision of the learned deputy registrar (hereinafter referred to as the DR) when reviewing the taxation of the government's bill of costs dated 27 August 1993 has taxed off completely the sum of RM4, RM135 and RM15,000 claimed in respect of items No 8, 9 and 21 respectively therein.

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Item 8 concerns the perusing of the memorandum of appeal consisting of four folios and the costs involved is RM4. Item 9 concerns the perusing of the record of appeal consisting of 135 folios costing RM135, and item 21 concerns the considering of the notice of appeal, memorandum of appeal, records of appeal, authorities and getting up the case for hearing of the appeal costing RM15,000. Order 59 r 24(2) E of the Rules of the High Court 1980, (hereinafter referred to as the RHC) requires that dates must be furnished to each item. However, the government in its bill of costs did not state any date against the three items, leaving the column blank. During taxation before the DR on 16 June 1994, the learned counsel for the government stated orally that F those dates for items 8 and 9 were known and that is should be 11 September 1989. As for item 21, the learned counsel said that the date should start from October 1989 until 20 November 1989. The DR agreed as regards items 8 and 9, and so she inserted the dates in the bill as suggested by the learned counsel and allowed the claim by the government on the items. She disagreed, however, in respect of item 21 G and inserted therein instead her own dates commencing from 1 August 1989 until 20 November 1989, which according to her are the period for the perusal of notice of appeal. So she taxed off RM11,000 against this item 21. So for that purpose of the proceedings she allowed a total costs of RM4,139 only for the three items against the claim of RM15,139. H

Sarjit Singh Khaira, (hereinafter referred to as Sarjit) being dissatisfied with the allowances allowed for in respect of the said three items applied to the DR for review on the principal ground of non-compliance with the provisions of above-stated O 59 r 24(2) of the RHC and the 'filling in of those omissions with dates of her own I making by the DR, without application to amend, apparently having forgotten that one of the reasons why she herself gave the respondent (the government) leave on 21 January 1993 to replace its first bill of costs by a new bill was the failure to furnish various dates in the bill

filed on 17 September 1992'. This fact is confirmed by the records that the matter of taxation first came up for disposal on 21 January 1993 wherein the notice of taxation by the government was struck out with liberty to file afresh. The government's bill of costs left the dates against items 8, 9, and 21 blank. On 27 September 1993, after a lapse of about eight months, a fresh notice of taxation was issued enclosing the government's bill of costs dated 27 August 1993, (the subject matter of the present proceedings), with the relevant dates against the said items still missing. As mentioned earlier, during this proceedings the DR did what she did resulting in the order she made which Sarjit was not happy about and asked for a review. In the proceedings for review by the DR, she disallowed wholly the claim of the government in regard to items 8, 9, and 21 on the ground that she had no jurisdiction to allow the claim as the government had not furnished the dates against the said three items contrary to O 59 r 24(2) of the RHC. Hence this application for review by the judge made by the government. She held that the requirement as to the date in the said order of the RHC is mandatory.

Both parties before me submitted on the interpretation to be given to the word 'must' as found in O 59 r 24(2) of the RHC in relation to the date to be incorporated in the bill of costs. Many authorities were cited but in the main the said authorities were not directly in point. Authorities such as *Ling Teck Yiu Paul v Sibu Municipal Council* (Sibu Civil Application No 1 of 1988)(unreported) concerns the provisions of O 53 rr 1 and 2 of the RHC; whilst *Haji Mohamed bin Suboh v Davadas* [1981] 1 MLJ 136 concerns the extension of time to serve the memorandum of appeal and *Mohamed bin Ismail v Tan Sri Haji Osman Saat & Ors* [1982] 2 MLJ 133 concerns the wrong procedure adopted in making application to court. There was no authority on O 59 r 24(2) or matter of similar nature being cited before me.

Thus, it is a matter of the interpretation to be given to the word 'must' used in O 59 r 24(2) of the RHC that concerns me now. If it is a mandatory provision that against each item claimed in the bill of costs, the date is required, then the DR was right in disallowing the claim of the government over the said items because against the respective items, the government in its bill of costs did not provide any date. But in my view, that is not the intention of the legislature that it be so in respect of every item claimed during taxation.

Rule 1(1) defines 'costs' as including fees, charges, disbursement, expenses and remuneration. So for these items of costs in order for the taxing officer to be able to arrive at a correct decision in taxation exercise, he must be satisfied as to each item claimed in the bill of costs. Certain items are by necessity required to be satisfied by the provision of dates in regard to anything done in order to satisfy the taxing officer so as to succeed in the claim for costs. However, there may be cases where by the nature of anything done which is to be included as an item of costs which cannot be determined by any specific date. A good example is in the case of making preparations for a particular case to

come on for trial. The time spent or taken may spread over a period of time continuous or with a break in between. In such a case it will be utterly burdensome to list out all the dates involved. It suffices if the claim over the particulars mentioned in the bill justifies the taxing officer as being reasonable in the exercise of his discretion in taxing the costs in respect of the item. For that reason, in App 1 to the order, provisions are made in respect of certain items where the amount of costs is fixed based on certain criteria, such as to be based on the number of folios involved and so forth. However, where the amount cannot be quantified, the discretion is given to the taxing officer to decide on the amount based on the matters presented before him during taxation. Take the case of item 8 in the bill of costs of the government. It concerns the perusing of the memorandum of appeal. It is so itemized under item 84 of the appendix. Item 84 provides for costs based on the number of folios being at RM1 per folio. If the DR is satisfied as to the matter as mentioned in the particulars as against the number of folios involved, it matters not whether any date is included in the bill against the item, for to attend to the matter of perusing the memorandum of appeal, it need not be done on any particular day or in so many days. But for so long as the number of folios is appropriate and is multiplied by the cost per folio, the government is entitled for its costs on the item be taxed. The same principle would apply to item 9 of the bill. Then when comes to item 21 of the bill, it is not a matter where the amount could be predetermined in the appendix but is a matter given to the discretion of the DR to determine based on the facts and circumstances presented before her during taxation. In the light of all that, I am of the view that O 59 r 24(2) of the RHC should not be given strict interpretation as to give the word 'must' used therein its ordinary meaning of being mandatory in nature. The word 'must' therein is to be construed depending on the circumstances of each individual case or matter. The whole idea in taxation exercise is to satisfy the taxing officer before allowing the claim for costs as is appropriate in the circumstances. Therefore, it is wrong for the DR in this case to have declined jurisdiction over the three items solely on the ground that the government has failed to include the respective dates in the bill of costs. I therefore, direct that the matter be remitted back to the DR for her determination as regard the amount of costs to be allowed in respect of the said three items.

Order accordingly.

Reported by Alexandra Wong